

**REMARKS**

Reconsideration and allowance of the above-referenced application are respectfully requested. Claims 1-28 are pending. Claims 2-4 and 7-9 are withdrawn from consideration. Claims 1 and 5 are allowed. Claims 6 and 10-28 are rejected. Claims 6, 10-12, and 25-27 are amended to further clarify the claimed invention. No new matter has been added.

**Objection to Claim 6**

Claim 6 is objected to. Specifically, the Examiner states that: "Claim 6, lines 7-11 contains 'schools' twice. One of the instances should be removed."

The applicants thank the Examiner for the suggestion and claim 6 is amended accordingly. Please note that this claim amendment corrects a typographical error. As a result of this claim amendment, applicants request that the Examiner remove the objection to claim 6.

**Rejection of claims 6 and 27 under 35 U.S.C. §112, second paragraph**

Claims 6 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner asserts that:

Claim 6 recites the limitation "said list" in line 22. There is no previous mentioning of a generated list. Thus, there is insufficient antecedent basis for this limitation in the claim.

Claim 27 recites the limitation "each of the generated lists" in the last limitation. The previous mentioning of a generated list implies that a single list is generated for the potential substitute workers. Thus, there is insufficient antecedent basis for this limitation in the claim.

Claims 6 and 27 are amended accordingly. As a result of these claim amendments, applicants request that the Examiner remove the rejection of claims 6 and 27 under 35 U.S.C. §112, second paragraph.

**Rejection of claims 6, 10 and 27 under 35 U.S.C. §102(a)**

Claims 6, 10 and 27 stand rejected under 35 U.S.C. §102(a) as being anticipated by the Subfinder<sup>TM</sup> system (hereinafter, "Subfinder"). The Examiner asserts that:

... This is a product rejection. Therefore, the following references explaining the different aspects of Subfinder are considered as describing one product:

- "Automated Substitute Finder System," from the Internet (hereinafter, reference A);
- 'Computer calls for substitutes,' from *The Sun* (hereinafter, reference B);

- ‘School Watch The daily hunt for substitute teachers,” from *The Atlanta Journal the Atlanta Constitution* (hereinafter, reference C); and
- ‘Myriad locations, student populations no longer hinder substitute management system,” from *The Journal* (hereinafter, reference D)

As per claim 6, Subfinder discloses a method of performing substitute fulfillment by finding substitutes for absentee workers in an organization, comprising the steps of:

providing an automated substitute fulfillment system remote from said organization (reference A, page 1, paragraph 1; reference B, abstract; reference D, abstract; Subfinder is a system that allows school organizations to find substitute teachers. Subfinder further allows school district offices to house the system and separate school organizations to access the system remotely.);

wherein said organization is one or more of the group comprising schools, school districts, retail banks, branch offices of banks, convenience stores, manufacturing facilities, fire departments, police departments, hospitals, transportation departments, airlines and temporary worker agencies (reference A, page 1, paragraph 1; reference B, abstract, page 2, paragraphs 16 and 17; reference D, abstract, page 1, paragraphs 3 - 6; Subfinder is a system that allows school organizations to find substitute teachers.);

initializing said substitute fulfillment system by creating a main database of stored substitute fulfillment data records (reference A, page 1, paragraphs 2 and 5; Subfinder maintains a database of absence and substitute fulfillment information.);

notifying said substitute fulfillment system of worker absence (reference A, page 1, paragraph 2; Subfinder allows employees to notify the system of absences.);

automatically identifying potential substitute workers using said substitute fulfillment system (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.);

automatically contacting potential substitute workers serially and relaying a replacement request until one potential substitute agrees to cover said absence or until said list is exhausted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.);

notifying personnel in said organization of the results (reference A, page 1, paragraphs 2 - 5, Subfinder updates the substitute information in the database and further notifies personnel in the organization of the results via reports.).

As per claim 10, Subfinder discloses a method of performing substitute fulfillment by finding floating workers for absentee workers in an organization, comprising the steps of:

providing an automated substitute fulfillment system remote from said organization (reference A, page 1, paragraph 1; reference B, abstract; reference D, abstract; Subfinder is a system that allows school organizations to find substitute teachers. Subfinder further allows school district offices to house the system and separate school organizations to access the system remotely.);

initializing said substitute fulfillment system by creating a main database of stored floating workers fulfillment data records (reference A, page 1, paragraphs 2 and 5; Subfinder maintains a database of absence and substitute fulfillment information.);

notifying said floating worker fulfillment system of a worker absence (reference A, page 1, paragraph 2; Subfinder allows employees to notify the system of absences.);

automatically identifying floating workers who should be notified by said system (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.);

automatically contacting a floating worker and relaying absent worker's position and location (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.); notifying personnel in said organization of the results (reference A, page 1, paragraphs 2 - 5; Subfinder updates the substitute information in the database and further notifies personnel in the organization of the results via reports.).

As per claim 27, Subfinder discloses a method for performing substitute fulfillment for a plurality of organizations comprising:

receiving an absentee list from an organization via at least one communication link, said list comprising one or more absent workers (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating in response to receiving the absentee list a list of one or more potential substitute workers who can fill in for each absent worker on the absentee list using worker records having information associated with the absent worker and substitute records having information associated with at least one substitute worker (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.); and

contacting potential substitute workers listed on each of the generated lists until one of the substitute workers in each of the generated lists agrees to fill in for the absent worker or until the generated list is exhausted for each generated list until all of the generated lists are exhausted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.).

Subfinder discloses an automated calling system for receiving a telephone call from an employee reporting the employee's projected absence and calling potential qualified substitutes until the projected absence is filled. If the system is unable to fill an absence, the system stops calling on that job and manual intervention is needed to fill the position.

Thus, comparing Subfinder with the substitute fulfillment method as recited in claims 6 and 10 of the present application, Subfinder does not disclose the step of "automatically

notifying personnel in said organization of results.” The Examiner cites reference A, page 1, paragraphs 2-5 as disclosing this step. In reference A, paragraph 4, the system allows for principals or their assistants to call the system to receive verbal reports of teacher absences and substitute activity. In reference A, paragraph 5, the system operator can run a report. In contrast, the substitute fulfillment system of the present application generates reports and mails electronically and/or faxes the reports to designated personnel in an organization (see page 26, lines 15-29). Running a report is not equivalent to a system acting proactively by “automatically notifying personnel in said organization of the results.” Hence, the Subfinder system does not perform the step of “automatically notifying personnel in said organization of results” as recited in claims 6 and 10 of the present application. As a result, Subfinder does not disclose each and every element in claims 6 and 10 as required under 35 U.S.C. §102(a).

Regarding claim 27 of the present application, Subfinder does not disclose the step of “receiving from an organization via at least one communication link, an absentee list comprising one or more absent workers” (emphasis added). The list of absent workers is provided to the system by an organization. The Examiner cites reference A, page 1, paragraph 2 as disclosing this step. Paragraph 2 discloses employees calling into the system and reporting absences. Thus, an absence is reported by the employee who will be absent and not by the organization employing the worker. Hence, the Subfinder system does not perform the step of “receiving from an organization via at least one communication link, an absentee list comprising one or more absent workers” as recited in claim 27 of the present application. As a result, Subfinder does not disclose each and every element in claim 27 as required under 35 U.S.C. §102(a).

Thus, for at least these reasons, independent claims 6, 10 and 27 are patentable over Subfinder. As a result, the applicants request that the rejection of claims 6, 10 and 27 under 35 U.S.C. §102(a) be withdrawn.

#### **Rejection of claims 11-21 and 24-26 under 35 U.S.C. §103(a)**

Claims 11-21 and 24-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Subfinder. The Examiner asserts that:

...This is a product rejection. Therefore, the following references explaining the different aspects of Subfinder are considered as describing one product:

- “Automated Substitute Finder System,” from the Internet (hereinafter, reference A);
- “Computer calls for substitutes,” from *The Sun* (hereinafter, reference B);

- “School Watch The daily hunt for substitute teachers,” from *The Atlanta Journal the Atlanta Constitution* (hereinafter, reference C); and
- “Myriad locations, student populations no longer hinder substitute management system,” from *The Journal* (hereinafter, reference D).

As per claims 11 and 25, Subfinder discloses a substitute fulfillment system that identifies and secures by finding substitute workers for a plurality of organizations comprising:

a database comprising worker records, said worker records having information associated with workers for each of the organizations, and substitute records, said substitute records having information associated with at least one substitute worker (reference A, page 1, paragraphs 2 and 5; reference D, abstract; Subfinder maintains a database of worker records including absence and substitute fulfillment information.); and

a server coupled to the database (reference D, page 2, paragraphs 11 and 12), the server is configured for:

receiving absentee information representing an absent worker via at least one communication link coupled to the server (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating in response to receiving the absentee information a list of one or more potential substitute workers who can fill in for the absent worker using the worker records associated with the absent worker and the substitute records (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.); and

contacting potential substitute workers listed on the generated list until one of the substitute worker agrees to fill in for the absent worker or until the generated list is exhausted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.).

Subfinder does not expressly disclose that the organizations are different. However, reference B does disclose the use of Subfinder for personnel other than teachers (page 2, paragraph 16) and reference D discloses using Subfinder for a 400-school district that encompasses a vast array of schools with differing teacher responsibilities and qualifications and that is geographically diverse (abstract, page 1, paragraphs 3 - 6).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the substitute fulfillment system include differing organizations because even differing organizations have overlapping responsibilities and positions. By using a central substitute fulfillment system, the differing organizations can pool substitute worker resources and fill absent positions more effectively and efficiently.

As per claim 12, Subfinder discloses the substitute fulfillment system of claim 11 wherein each of the least one communication link is a link from the group consisting of a telephone communication link or an Internet communication

link (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.).

As per claim 13, Subfinder discloses the substitute fulfillment system of claim 12 wherein the server generates the list of one or more substitute workers using a preferred list of substitute workers associated with the worker record for the absent worker (reference A, page 1, paragraph 2; reference B, page 1, paragraph 6; reference C, page 2, paragraph 7; Subfinder creates a list of the most preferred or qualified substitute workers.).

As per claim 14, Subfinder discloses the substitute fulfillment system of claim 12 wherein the server is further configured to generate a list of absent workers for an organization and to transmit the generated list of absent workers to the organization via the at least one communication link (reference A, page 1, paragraphs 2, 5 and 7; reference D, abstract, page 1, paragraph 3, page 2, paragraphs 11 and 12; Subfinder can be accessed by an organization remotely and, therefore, the list of absent workers can be accessed by an organization remotely via at least one communication link.).

As per claim 15, Subfinder discloses the substitute fulfillment system of claim 12 wherein the server is further configured to generate a list of substitute workers and names of the absent workers who the substitute workers will be filling in for a given organization and to transmit the generated list of substitute worker and names of the absent workers who the substitute workers will be filling in for to the given organization via the at least one communication link (reference A, page 1, paragraphs 2, 4 and 5; Subfinder generates a list of substitute workers as well as the names of absent workers who the substitutes will be filling for. Organizations can access the lists remotely via at least one communication link.).

As per claim 16, Subfinder discloses the substitute fulfillment system of claim 12 further comprising an interactive voice response system controlled by the server for interacting with a potential substitute worker from the generated list of potential substitute workers via at least one telephone communication link whereby the potential substitute worker is secured for filling in for the absent worker (reference A, page 1, paragraphs 2, 4 and 5; reference B, abstract, page 2, paragraph 9; reference C, page 1, paragraph 6; reference D, page 2, paragraph 11; Subfinder uses an interactive voice response system to interact with potential substitute workers.).

As per claim 17, Subfinder discloses the substitute fulfillment system of claim 12 wherein the server is further configured to receive a message via the at least one communication link and to forward the received message to the substitute worker who agrees to fill in for the absent worker via the at least one communication link (reference A, page 1, paragraphs 2, 4 and 5; reference B, abstract, page 2, paragraphs 9 and 21; reference C, page 1, paragraph 6; reference D, page 2, paragraph 11; Subfinder can receive messages and forward them to substitute workers.).

As per claim 18, Subfinder discloses the substitute fulfillment system of claim 11 wherein each worker record comprises worker identification, contact, position, qualification, and substitute selection information (reference A, page 1, paragraphs 2, 4 and 5; reference C, page 2, paragraph 7).

As per claim 19, Subfinder discloses the substitute fulfillment system of claim 11 wherein each worker record further comprises entitlement information and historical information of absences and substitute fulfillment events (reference A, page 1, paragraphs 2, 4 and 5; reference C, page 1, paragraph 6).

As per claim 20, Subfinder discloses the substitute fulfillment system of claim 11 wherein each substitute worker record comprises substitute identification, contact, qualification, and availability information (reference A, page 1, paragraphs 2, 4 and 5; reference C, page 2, paragraph 7).

As per claim 21, Subfinder does not expressly disclose the substitute fulfillment system of claim 11 wherein the organizations are unaffiliated.

However, reference B does disclose the use of Subfinder for personnel other than teachers (page 2, paragraph 16) and reference D discloses using Subfinder for a 400-school district that encompasses a vast array of schools with differing teacher responsibilities and qualifications and that is geographically diverse (abstract, page 1, paragraphs 3 - 6).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the substitute fulfillment system include unaffiliated organizations because even unaffiliated organizations have overlapping responsibilities and positions. By using a central substitute fulfillment system, the unaffiliated organizations can pool substitute worker resources and fill absent positions more effectively and efficiently.

As per claim 24, Subfinder discloses the substitute fulfillment system of claim 11 wherein the workers are teachers and the substitute workers are substitute teachers (reference A, page 1, paragraphs 1 and 2; reference B, abstract; reference C, page 1, paragraph 6, page 2, paragraph 7; reference D, abstract).

As per claim 26, Subfinder discloses a method for performing substitute fulfillment for a plurality of different organizations comprising:

- receiving absentee information representing an absent worker via at least one communication link (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

- generating in response to receiving the absentee information a list of one or more potential substitute workers who can fill in for the absent worker using worker records having information associated with at least one substitute worker (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.);

- contacting potential substitute workers listed on the generated list via at least one telephone link (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.); and

- interacting with the potential substitute worker using an interactive voice response system until one of the substitute workers agrees to fill in for the absent worker or until the generated list is exhausted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.).

Subfinder does not expressly disclose that the organizations are different. However, reference B does disclose the use of Subfinder for personnel other than teachers (page 2, paragraph 16) and reference D discloses using Subfinder for a 400-school district that encompasses a vast array of schools with differing teacher responsibilities and qualifications and that is geographically diverse (abstract, page 1, paragraphs 3 - 6).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the substitute fulfillment system include differing organizations because even differing organizations have overlapping responsibilities and positions. By using a central substitute fulfillment system, the differing organizations can pool substitute worker resources and fill absent positions more effectively and efficiently.

Regarding claim 11, Subfinder does not teach or suggest “A substitute fulfillment system that identifies and secures substitute workers for a plurality of organizations comprising: ... a server coupled to the database, the server is configured for: receiving absentee information representing an absent worker via at least one Internet communication link coupled to the server ...” as recited in amended claim 11 of the present application (emphasis added). Subfinder only discloses the use of a telephone communication link and does not disclose the use of an Internet communication link. As a result, Subfinder does not teach or suggest each and every element in claim 11 as required under 35 U.S.C. §103(a). Hence, independent claim 11, as well as dependent claims 12-24 are patentable over Subfinder.

Similarly, Subfinder does not teach or suggest “A method for performing substitute fulfillment for a plurality of different organizations comprising: receiving absentee information representing an absent worker via at least one Internet communication link” as recited in claim 26 of the present application (emphasis added). As recited above, Subfinder only discloses the use of a telephone communication link and does not disclose the use of an Internet communication link. As a result, Subfinder does not teach or suggest each and every element in claim 26 as required under 35 U.S.C. §103(a). Hence, independent claim 26 is patentable over Subfinder.

Regarding claim 25 of the present application, Subfinder does not disclose “A substitute fulfillment system that identifies and secures substitute workers for a plurality of different organizations comprising: ... a server coupled to the database, the server is configured for: receiving from an organization, via at least one Internet communication link coupled to the server, an absentee list of one or more absent workers” (emphasis added). The list of absent



workers is provided to the system by an organization. Subfinder discloses employees calling into the system and reporting absences, thus an absence is reported by the employee who will be absent and not by the organization employing the worker. Hence, the Subfinder system does not perform the step of "receiving from an organization, via at least one Internet communication link coupled to the server, an absentee list of one or more absent workers" as recited in claim 25 of the present application. As a result, Subfinder does not teach or suggest each and every element in claim 25 as required under 35 U.S.C. §103(a).

Thus, for at least these reasons, 11-21 and 24-26 are patentable over Subfinder. As a result, the applicants request that the rejection of claims 11-21 and 24-26 under 35 U.S.C. §103(a) be withdrawn.

**Rejection of claims 22, 23 and 28 under 35 U.S.C. §103(a)**

Claims 22, 23 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Subfinder as applied above and Taylor (U.S. Patent 5,832,497). The Examiner asserts that:

As per claim 22, Subfinder discloses the substitute fulfillment system of claim 12 that enables substitute workers to search for work (reference A, page 1, paragraphs 1 and 2; reference B, abstract, page 2, paragraph 24).

Subfinder does not expressly disclose a website interface coupled to the server, the website interface posting a list of positions of absent workers that needs to be filled by substitute workers on a website, wherein the list of positions is generated by the server using received information regarding absent workers thereby providing an opportunity for substitute workers to search for work.

Taylor discloses a website interface coupled to the server, the website interface posting a list of positions of absent workers that needs to be filled by substitute workers on a website, wherein the list of positions is generated by the server using received information regarding absent workers thereby providing an opportunity for substitute workers to search for work (col. 1, lines 33 - 42; col. 2, lines 48 - 51; col. 2, line 65 - col. 3, line 19; col. 6, lines 58 - 64; The reference discloses posting a list of positions generated from a server on a website and allowing work searchers to search through the list of positions.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34 - 39).

As per claim 23, Taylor discloses the substitute fulfillment system of claim 22 wherein the server is further configured to secure a substitute worker in response to the substitute worker selecting a posted position via the Internet communication link (col. 4, line 63 - col. 5, line 5; col. 5, lines 49 - 62; The reference discloses allowing workers to select a posted position by submitting an

application for that position. The reference further discloses employers reviewing submitted applications for particular job postings.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34 - 39).

As per claim 28, Subfinder discloses a method for performing substitute fulfillment for a plurality of different organizations comprising:

receiving absentee information representing an absent worker via at least one communication link (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating a list of positions of absent workers that need to be filled by substitute workers (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.).

Subfinder does not expressly disclose placing the list of positions on a website, receiving a response by a substitute worker selecting a posted position on the website via an Internet communication link; and securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker.

Taylor discloses placing the list of positions on a website, receiving a response by a substitute worker selecting a posted position on the website via an Internet communication link (col. 4, line 63 - col. 5, line 5; col. 5, lines 49 - 62; The reference discloses allowing workers to select a posted position by submitting an application for that position.); and

securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker (col. 4, line 63 - col. 5, line 5; col. 5, lines 49 - 62; The reference discloses allowing employers to review submitted applications for hiring of workers for particular job postings.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34 - 39).

Taylor discloses an electronic automated information exchange and management system. The system disclosed in Taylor is also known as "monster.com" (see col. 6, lines 58-60). Taylor provides an on-line resume submission system in which an applicant submits his or her resume into a resume database or to a specified employer as a job application.

Regarding claim 22, the Examiner asserts that "Subfinder discloses the substitute fulfillment system of claim 12 that enables workers to search for work (reference A, page 1, paragraphs 1 and 2; reference B, abstract, page 2, paragraph 24)." These cited sections do not teach or suggest a system that enables workers to search for work. In addition, the cited art does

not teach or suggest a system that enables workers to search for work. Subfinder provides a system that attempts to fulfill an absent workers position, not a system that allows potential workers an opportunity to search for work. Hence, Subfinder does not teach or suggest a system that provides “an opportunity for substitute workers to search for work” as recited in claim 23.

Moreover, as admitted by the Examiner, Subfinder does not include a website interface posting a list of positions of absent workers that need to be filled by substitute workers on a website, wherein the list of positions is generated by the server using received information regarding absent workers thereby providing an opportunity for substitute workers to search for work” as recited in claim 22 of the present application. Rather the Examiner relies on Taylor as disclosing this limitation by citing col. 1, lines 33-42; col. 2, lines 48-51; col. 2, line 65 – col. 3, line 19; col. 6, lines 58-64). However, Taylor does not teach or suggest “posting a list of positions of absent workers that need to be filled by substitute workers on a website, wherein the list of positions is generated by the server using received information regarding absent workers thereby providing an opportunity for substitute workers to search for work” (emphasis added). The positions listed in Taylor are not positions of absent workers, nor is the list of positions generated by the server using received information regarding absent workers. Thus, neither Subfinder nor Taylor, singularly or in combination, teach or suggest “posting a list of positions of absent workers that need to be filled by substitute workers on a website, wherein the list of positions is generated by the server using received information regarding absent workers thereby providing an opportunity for substitute workers to search for work” as recited in claim 22 of the present application.

Moreover, neither Subfinder nor Taylor, singularly or in combination, teach or suggest a server configured “to secure a substitute worker in response to the substitute worker selecting a posted position via the Internet communication link” as recited in claim 22 and similarly recited in claim 28 of the present application. The Examiner relies on Taylor as disclosing this step, however Taylor does not disclose the step of securing a worker. As stated by the Examiner Taylor allows “workers to select a posted position by submitting an application for that position” and “employers reviewing submitted applications for particular job postings.” A worker submitting a resume and an employer reviewing the resume is not the same as securing a worker. The substitute fulfillment system of the present application “secures” a worker, e.g., arranges for a substitute worker to select a position and fill the position of the absent worker. In other words,

a server that allows an applicant to submit a resume in the hopes of landing a position is not the same as a server that allows a substitute to select an absent worker's position and fill the position. Thus, neither Subfinder nor Taylor, singularly or in combination, teach or suggest a server configured "to secure a substitute worker in response to the substitute worker selecting a posted position via the Internet communication link" as recited in claim 22 and similarly recited in claim 28 of the present application.

In addition, regarding the rejection of claims 22, 23 and 28, the Examiner fails to cite the requisite motivation to support the ultimate legal conclusion of obviousness under 35 U.S.C. §103. Obviousness is not an abstract concept, but must stem from the applied prior art as whole and have realistically impelled one having ordinary skill in the art to modify a specific reference in a specific manner to arrive at a specifically claimed invention with a reasonable expectation of successfully achieving a particular benefit. *In re Newell*, 891 F.2d 899, 13 USPQ2d 1210 (Fed. Cir. 1985). Accordingly, the Examiner is obliged to identify a source in the applied prior art for (1) claim limitations; and (2) the requisite motivation, teaching or suggestion to modify a reference or to combined references with the reasonable expectation of successfully achieving a particular benefit. *Smiths Industries Medical Systems v. Vital Signs, Inc.*, 183 F.3d 1347, 51 USPQ2d 1415 (Fed. Cir. 1999). The Examiner does not provide the proper motivation, teach or suggest to combine the cited art. Therefore, that burden has not been discharged.

Since each reference, Subfinder and Taylor, disclose a complete system, the Examiner needs to identify the proper motivation for combining the references. Specifically, the Examiner fails to provide proper motivation for combining the teachings of Subfinder with the website interface of Taylor. Recognizing after the fact that such a modification would provide an improvement or advantage, without suggestion thereof by the prior art in an indication of improper application of hindsight considerations which is not proper criteria for resolving obviousness.

The Examiner asserts that "At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34-39)." This is not proper motivation but is improper use of hindsight.

Thus, for at least these reasons, 22, 23 and 28 are patentable over Subfinder in view of Taylor. As a result, the applicants request that the rejection of claims 22, 23 and 28 under 35 U.S.C. §103(a) be withdrawn.

The foregoing is submitted as a full and complete Response to the Office Action mailed 29 October 2002, and early and favorable consideration of the claims is requested. If the Examiner believes any informalities remain in the application which may be corrected by Examiner's Amendment, or if there are any other issues which may be resolved by telephone interview, a telephone call to the undersigned attorney at (202)508-5843 is respectfully solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1458, and please credit any excess fees to such deposit account.

Respectfully submitted,

Dated: 10 Dec. 2002

Thomas A. Corrado

KILPATRICK STOCKTON LLP  
607 14<sup>th</sup> Street, Suite 900  
Washington, DC 20005-2018  
Phone 202-508-5800  
Fax 202-585-0045

Thomas A. Corrado  
Attorney for Applicant  
Registration No. 42,439